

FINAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to amend Section 3282 of the California Code of Regulations (CCR), Title 15, Division 3, concerning Inmate Confidential Telephone Calls.

This action amends provisions governing confidential calls between inmates and attorneys within the California Department of Corrections and Rehabilitation (Department). CCR Section 3282 is being amended to specify and standardize the requirements that are to be met for confidential phone calls between attorneys and inmates.

These regulations were recommended by the Office of the Inspector General based on a confidential phone call that was granted between an attorney and inmate without following proper procedure, and are necessary to specify and standardize the process that an attorney must complete in order to receive approval for a confidential phone call with an inmate. This will provide clarity, consistency and standardization on regulations governing confidential calls for the CDCR.

These regulations will update current language relating to inmate /attorney confidential phone calls. In addition, these regulations provide new language governing the process by which an attorney must complete in order to receive approval for a confidential phone call with an inmate.

Subsections 3282(a) through (f) are unchanged.

Subsection 3282(g)(1) initial sentence is amended and new language is adopted to reflect and specify the necessary personal and professional information that an attorney must provide in order to receive approval for a confidential phone call with an inmate. These regulations are necessary in order to maintain safety and security for the Facility/Institution, inmates, staff, and the public.

Existing text from subsection 3282(g)(1) secondary sentences are relocated to new subsection 3282(g)(5).

Existing subsections 3282(g)(2) through (3) are renumbered and relocated to new subsections 3282(g)(6) through (7).

New subsection 3282(g)(2) is adopted to reflect and specify the necessary declarations, verification of client representation and need for the confidential phone call with an inmate in order to receive approval for a confidential phone call with an inmate. These regulations are necessary in order to maintain safety and security for the Facility/Institution, inmates, staff, and the public.

New subsection 3282(g)(3) is adopted to reflect consequences an attorney may face if they provided false statements or deliberate misrepresentation of facts specific to information requested.

New subsection 3282(g)(4) is adopted to specify upon receipt of the information specified in (g)(1), a California Law Enforcement Telecommunications System check of the attorney through the Department of Justice and verification of the attorney's credential through the governing state bar will be conducted. Once clearance has been approved, the attorney may schedule the confidential phone call with the

inmate. In order to retain their approval/clearance, the attorney shall report any changes in personal and professional information, arrest history and declarations as noted in subsection (g)(2).

New subsection 3282(g)(5) is relocated from existing subsection 3282(g)(1) secondary sentences and text is unchanged.

New subsections 3282(g)(6) through (7) are renumbered and relocated from existing subsections 3282(g)(2) through (3) and text is unchanged.

Subsections 3282(h) through (i) are unchanged.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action or would be as effective and less burdensome to affected persons.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing businesses, or create or expand businesses in the State of California.

The Department, in proposing amendments to these regulations, has not identified nor has it relied upon any technical, theoretical, or empirical study, report, or similar document.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states because they are not affected by the internal management of State prisons; or on housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determinations.

PUBLIC HEARING COMMENTS:

Public Hearing: Held July 12, 2007 at 09:00 a.m.

SUMMARIES AND RESPONSES TO ORAL COMMENTS AT THE PUBLIC HEARING:

No one commented at the Public Hearing.

SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:

Commenter #1:

Comment 1A: Commenter states that in subsection 3282(g)(1) confidential phone calls should be permitted not only by attorneys, but an attorney representative as well.

Accommodation: None.

Response 1A: The Department contends that confidential calls are permitted by attorney representatives as stated in new subsection 3282(g)(4). For additional reference, CCR, Title 15, subsection 3178(c)(1) defines attorney representative.

Comment 1B: Commenter states that attorneys required to provide date of birth, driver's license number or identification number and proof of good standing with a bar association over the telephone has no bearing or relevance to the confidential telephone call with their inmate/client.

Accommodation: None.

Response 1B: The Department disagrees. The Initial Statement of Reasons explains why this regulatory change is necessary and appropriate. This information is necessary in order to maintain the safety and security for the Facility/Institution, inmates, staff and the public. The information is used to verify the identity and professional standing of a person claiming to be an inmate's attorney. The regulations provide clarity, consistency and standardization on the regulations governing confidential calls for the Department. The information requested is not given over the telephone; rather it is to be submitted in writing on an official letterhead by the attorney as stated in CCR, Title 15, subsection 3282(g)(1).

Comment 1C: Commenter states that the requirement for an attorney to describe past visiting exclusions or offenses is irrational and should be deleted.

Accommodation: None.

Response 1C: The Department is not certain as to the commenter's interpretation of irrational. The Department does contend that information on past visiting exclusions or offenses is necessary in order to maintain safety and security for the Facility/Institution, inmates, staff and the public.

Comment 1D: Commenter again states that confidential calls should be afforded to attorney representatives as well as attorneys, sighting CCR, Title 15, subsection 3282(g)(4) suggests it is allowed.

Accommodation: None.

Response 1D: Refer to Commenter #1, Response 1A.

Comment 1E: Commenter notes that CCR, Title 15, subsection 3282(g) requires inmates to pay to an emergency or confidential telephone call with funds from their trust account, with no provisions to an

indigent inmate who may need such a call. Commenter feels that such provisions are essential and without them, the Department is discriminating against indigent inmates.

Accommodation: None.

Response 1E: The Department contends that with appropriate authentication of the caller, an inmate may receive a confidential call from the attorney or their representative as stated in CCR, Title 15, subsection 3282(g)(5). It is also the Department's position to make every reasonable effort to allow each inmate, whether they can afford it or not, the opportunity to make an emergency or confidential telephone call.

Commenter #2:

Comment 2A: Commenter states in regards to subsection 3282(g)(4), that if the telecommunications system check and verification of good standing with the State Bar is not proceeded upon expeditiously by prison personnel, attorneys could fail to meet deadlines to abandon or dismiss an appeal or other legal issues.

Accommodation: None.

Response 2A: The Department understands the commenter's position and would like to ensure the commenter that every reasonable effort will be made to process each confidential phone call request as expeditiously as possible.

Comment 2B: Commenter states that attorneys are often contacted by family members on behalf of the inmate and in this case, they do not have written documentation showing that they are Attorney of Record for the inmate. Commenter further states that having to document the exact purpose for requesting a confidential phone call with the inmate/client is a violation of the attorney/client privilege.

Accommodation: None.

Response 2B: The Department disagrees. The requesting attorney does not have to provide a written document from a retaining source, rather, the attorney must declare in writing that they are seeking a confidential phone call with an inmate/client as listed in subsection 3282(g)(2). The Department further contends that the requesting attorney does not have to state the exact purpose of the confidential phone call but must demonstrate the need for the phone call as listed in subsection 3282 (g)(2). In addition, an inmate must be the initiator in the contact of an attorney for any other reason not listed in subsection 3282(g)(2) in order to assist in protecting the inmate from any unsolicited contact from an attorney not retained by the inmate.

Comment 2C: Commenter's primary contention is that at times, prison personnel tend to believe her relationship with the inmate/client is too personal and as a result, a determination is made by someone in the Litigation Office to simply ignore the request for the confidential telephone call.

Accommodation: None

Response 2C: The Department contends that although the above comment/objection does regard an aspect or aspects of the subject proposed regulatory action or actions and must be summarized pursuant

to Government Code Section 11346.9(b)(3), the comment/objection is either insufficiently related to the specific action or actions proposed, or generalized or personalized to the extent that no meaningful response can be formulated by the Department in refutation of or accommodation to the comment.

Commenter #3:

Comment 3A: Commenter states that the phrase “Institution Head” as used throughout the text be replaced with the word “Warden” for purposes of consistency and clarity.

Accommodation: None.

Response 3A: The Department contends that for the purposes of these regulations, “Institution Head” is deemed appropriate being that inmates are housed or supervised in areas that may include persons other than a Warden as the Departmental Head, such as a Regional Parole Administrator or Designated Manager of a facility housing inmates.

Comment 3B: Commenter objects to the extent that Section 3282(g)(2) subsection (D) prohibits an attorney from initiating a call to an inmate. Commenter further states that an attorney has the most knowledge regarding the litigation process and is thus in the best position to decide when a confidential call is necessary. Commenter request that the phrase “at the request of the inmate” be deleted from the text in order to allow an attorney to initiate a confidential telephone call with an inmate.

Accommodation: None.

Response 3B: The Department disagrees with this comment based on the need to ensure the safety and security of the institution, staff, public and inmates alike. The department contends that we can not allow attorneys the ability to contact inmates in an attempt to sway the inmate in to retaining an attorney for legal proceedings. The rights of each inmate must be protected. Therefore, unless an inmate requests to speak with an attorney, or the request is consistent with and declared under another subsection, the confidential call will not be allowed.

Comment 3C: Commenter requests that the Warden oversee all decisions to deny confidential phone calls in order to ensure consistency and add a necessary level of review to this important process. Commenter also requests that language stating such be added to subsection 3282(g)(3).

Accommodation: None.

Response 3C: The Department contends that the Institution Head or their Designee is fully capable to make an informed decision to approve/deny a confidential call request and maintain a level of consistency in the review process. It is the Institution Head’s discretion to delegate responsibility to designated staff members with the expectation that they will make an informed decision on the approval or denial of a confidential call request.

Comment 3D: Commenter states that requiring attorneys and their representatives to report any changes in their “arrest history” in order to retain their approval/clearance is inconsistent with other subsections, specifically subsection 3282(g)(2) which states attorneys must disclose “prior felony convictions”. Commenter further states that requiring this information is irrelevant to this process and

would unduly burden the attorney's right to privacy. In addition, commenter request that the language "arrest history and declarations" be deleted from subsection 3282(g)(4).

Accommodation: None.

Response 3D: The Department disagrees with the commenter. The Department contends that requiring an attorney or attorney representative to disclose any past felony convictions, arrest history and declarations in order to retain their approval/clearance for confidential calls with inmates is necessary in order to maintain consistency, safety and security of the institutions/Facility, staff, visitors and inmates alike.

Comment 3E: Commenter states that subsection 3282(g)(5) does not address the concerns of indigent inmates. Commenter requests that language be added that states if an inmate is indigent and needs to place a confidential call to their attorney, the institution will be responsible for paying for the phone call. Commenter also requests that language in this section be deleted and new language adopted. Specifically, "Institution Head" be deleted and replaced with "Warden", and "may be received from an attorney" be deleted and replaced with "the attorney may also initiate the call".

Accommodation: None.

Response 3E: In response to indigent inmates, refer to Commenter #1, Response 1E. In response to specific language being deleted and new language adopted, refer to Commenter #3, Response 3A and 3B.

Comment 3F: Commenter objects to the original wording in subsection 3282(g)(6) which allows Wardens to determine whether normal legal mail or attorney visits are appropriate means of communication that were not reasonably utilized and argues that the attorney not the Warden, is best suited to determine if the attorney needs to speak with the inmate and the most effective means of doing so. Commenter requests that language in this section be revised to state "Prisoners may use the established inmate appeals procedures, as provided in Section 3084, et seq., to appeal decisions to deny confidential phone calls with attorneys. Attorneys may appeal any denial relating to departmental policies, practices and regulations to the Secretary of the CDCR. Appeals relating to a specific facility's procedures or practices should be addressed in writing to the Warden or Associate Director of the facility where the appeal issue arises". Commenter again requests that Institution Head be deleted and Warden be adopted to the language in this section.

Accommodation: None.

Response 3F: The Department disagrees with the commenter. The Institution Head is fully capable to make the determination as to whether or not normal legal mail or attorney visits were an appropriate means of communication and were not reasonably utilized. If an inmate feels that the denial of a confidential phone call or any other staff decision has had an adverse affect on their well being, they have the right to appeal the decision. The inmate must follow the appeals process as provided in Title 15, section 3084.1. If an attorney is dissatisfied with the denial of a request for a confidential phone call, they may appeal the issue to the Institution Head. In response to the language "Institution Head" being deleted and replaced with "Warden", refer to Commenter 3, Response 3A.

Commenter #4:

Comment 4A: Commenter references subsection 3282(g)(1) and states that requesting attorneys should not be required to provide their date of birth, as this is a privacy issue. Commenter also states that requesting attorneys should not have to provide a valid driver's license number or State identification number, as the State Bar already affirms identity before issuing the bar number. Commenter further states that attorneys should not have to provide information on jurisdictions licensed to practice law, as proof of current registry and good standing with a governing bar association should clarify this already.

Accommodation: None.

Response 4A: Refer to Commenter 1, Response 1B.

Comment 4B: Commenter references subsection 3282(g)(2) and disagrees with the requirement that attorneys shall report any prior felony convictions upon request for a confidential phone call, stating that if the attorney has not been disbarred or received a certificate of rehabilitation, it should not matter.

Accommodation: None.

Response 4B: Refer to Commenter 1, Response 1C.

Comment 4C: Commenter references subsection 3282(g)(4) and believes that CDCR should specify a time limit (5 working days within receipt of request) to process any verification and avoid undue delay.

Accommodation: None.

Response 4C: Refer to Commenter 2, Response 2A.

Commenter #5

Comment 5A: Commenter states that it is very important for inmates to communicate with their attorneys directly instead of mail correspondence and believes that inmates should be able to make confidential phone calls to their attorneys via the inmate telephone or via a prison phone with the toll deducted from their trust account.

Accommodation: None.

Response 5A: The Department contends that the inmate phone system is designated solely to accommodate inmate-originated non confidential personal phone calls. An inmate may make a confidential telephone call via a prison phone with the toll deducted from their trust account as stated in subsection 3282(g) and in accordance with subsection 3282(g)(1).

Comment 5B: Commenter states that if an attorney calls the institution to speak with an inmate, staff should notify the inmate immediately and should be given the opportunity to speak with their attorney right away via any available phone. .

Accommodation: None.

Response 5B: The Department contends that in accordance with subsection 3282(g), if an incoming call is determined to be a confidential matter, the caller's name and phone number shall be obtained and the inmate promptly notified of the situation. If the attorney calling is the attorney of record for the inmate and has already been cleared, the inmate may return the call at the earliest opportunity possible. However, the confidential call must still follow the guidelines set forth in subsections 3282(g)(1) and 3282(g)(2). The Department further contends that an inmate can not be permitted to place a confidential phone call on any phone other than a prison phone as defined in subsection 3282(a)(5) in order to insure confidentiality of the conversation between the inmate and their attorney.